AUG 27 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 150

A. M. GILSTRAP, *et al.*,

Petitioners,

vs.

STANDARD OIL COMPANY, an Ohio corporation, *et al.*,

Respondents.

No. 151

A. M. GILSTRAP,

Petitioner,

vs.

STANDARD OIL COMPANY, an Ohio corporation, *et al.*,

Respondents.

On Petition for Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITIONERS' REPLY BRIEF
(To "Standard of Ohio")

N. LINDSAY SOUTH,
Fresno, Calif.,

R. C. W. FRIDAY,
P. O. Box 905 M. O.,
Los Angeles, Calif.,
Attorneys for Petitioners.

A. L. WIRIN,
Douglas Building, Los Angeles,
Of Counsel for Petitioners.

Parker & Baird Company, Law Printers, Los Angeles.

SUBJECT INDEX.

PAGE

Opinions Below 1

The United States v. Socony Vacuum Oil Co. et al. case was properly prosecuted in Wisconsin Federal District Court, even though many of the defendants had never been within the state 2

That, may it please the Court, petitioners insist, has, by S. of O.'s own brief, become part of federal question now here for review 2

"Standard of Ohio" motions: the one, Standard Oil Company, an Ohio corporation, by special appearance, and particularly many affidavits from Ohio, approaches the frivolous by the affiants being strangers to the record 4

Conclusion 6

Affidavit of service of printed copies of petition for writs of certiorari herein ..... App. p. 1

TABLE OF AUTHORITIES CITED.

CASES.

PAGE

Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126 7

Edwards v. United States, 91 Fed. (2d) 767 7

Los Angeles etc. Bank v. Northrup, 120 Cal. App. 677, 8 Pac. (2d) 528 6

Noshey v. Am. Auto Ins. Co., 68 Fed. (2d) 808 (C. C. A.) 4

State ex rel. Bond & G. T. v. Superior Court, 169 Wash. 688, 15 Pac. (2d) 660; affirmed in 289 U. S. 361; reported, too, in 89 A. L. R. 653 4

C. E. Stevens Co. v. Foster & Kleiser Co., 109 Fed. (2d) 764, No. 41 this Court; certiorari granted May 6, 1940 7

Thompson v. Terminal Shares, 89 Fed. (2d) 652 4

United States v. Socony Vacuum Oil Co. et al., 60 S. Ct. 811 ..... 2, 7

United States v. Wilshire, 9 Fed. Supp. 396; affirmed 77 Fed. (2d) 1022 7

TEXTBOOKS.

Ballantine on Corporations, Paragraph 333, p. 320 4

49 Corpus Juris 182 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 150

A. M. GILSTRAP, *et al.*,

Petitioners,

vs.

STANDARD OIL COMPANY, an Ohio corporation, *et al.*,

Respondents.

No. 151

A. M. GILSTRAP,

Petitioner,

vs.

STANDARD OIL COMPANY, an Ohio corporation, *et al.*,

Respondents.

On Petition for Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITIONERS' REPLY BRIEF
(To "Standard of Ohio")

Opinions Below.

"Standard of Ohio" (for brevity: S. of O., their brief, pp. 2-3) should have agreed that No. 9158, U. S. Circuit Court, Ninth Circuit, is now No. 150 before this

Hon. U. S. Supreme Court; and former No. 9200 is the No. 151 which also covered by Opinion, 108 F. (2d) 736. Howsoever what S. of O. brief would infer, as unreported,—we, the petitioners, believe is in the record [No. 150, R. 283; and No. 151, R. 377] for the attention of this Honorable Court, as to its every detail; per, too, where one very large corporation is obviously trying to evade the main issues:

United States v. Socony Vacuum Oil Co., et al., 60 S. Ct. 811: The which, case (May 6, 1940) where, affirming Wisconsin oil Sherman Anti-Trust convictions, the ruling was . . . *case was properly prosecuted in Winconsin Federal District Court, even though many of the defendants had never been within the state.*

A. That, May It Please the Court, Petitioners Insist Has by S. of O.'s Own Brief, Become Part of Federal Question Now Here for Review.

"B."

Thereto, we also add, the "B" (observation, already thereon, in printed petition on file, Nos. 150-151, pages 26-27) and, because so very important, *on that point,* prefer to restate:

> "B. Too, in conclusion, Petitioners insist that as part of (they, insist) the substantial Federal question Standard Oil Company, an Ohio corporation, per #1, of Questions Presented Page 9, herein, it, from the State of Ohio, engaged in interstate commerce, and Motion to Quash Service of Summons being granted erroneously, their DEFAULT [R. 264, in No. 9158] is in order; too in No. 9200 [R. 312-313, 146-147]."

The No. 9158 being here as No. 150. That No. 9200 being here as No. 151.

And petitioners, in each and both cases, insist S. of O.'s arguments throughout both cases, are frivolous,—when predicated primarily on Assistant Secretary of State, Robert V. Jordan's affidavit [R. 223-224-225] though served by duplicate alias summons and two copies complaints, in hand [R. 180-181, with $5.00 fee paid too, to said Secretary of State, No. 9158] with ample evidence, and statement of "Standard of Ohio" now fully before this High Court, as to their then and present, Ohio address [R. 264-265, Exhibit "C" giving Ohio address, R. 266, the Counter-Affidavit as to "Standard of Ohio" well-known, too to have an Ohio address; R. 266-267-268-269—"J. A. Brower makes no Affidavit herein. . . ." [R. (at) 270]—*then, F. H. Kelly, as Secretary,* [R. 272; 273-274 and 275-276-277] finally same Robert V. Jordan, Assistant Secretary of State, December 29, 1938 mailing back, to R. C. W. Friday, of counsel for petitioners, letter having given Secretary of State Office, the same "Main Office, of Standard Oil Company, a corp. Ohio; F. H. Kelly, its statutory Agent, #1405 East 6th St., Cleveland, Ohio. . . ." [R. 276-277-278-279]. [Same, No. 150, in No. 9158; and, likewise No. 9200, at R. 146-147 being No. 151, there reported properly served with process and $5.00 fee also paid and correct address again correctly stated, R. 147, No. 151.] And Exhibit "X" [R. 321, No. 151] from Secretary of State of Ohio, never disputed, as to "Standard of Ohio" correct address in Ohio.

In fact, May it please this Honorable Court,—"Standard of Ohio" in both, No. 150 [R. 280 and 180-181-182] and No. 151 [R. 147 and 321] correctly served. Thereafter, after 30 days expired after Service of Process upon Secretary of States, or Assistant Secretary . . . *Process is complete* [R. 264-265, in No. 150] and, likewise

under similar Motion for Default, in No. 151 [R. 312-313-314-315-316-317-318-319-320], citing particularly:

> *State, ex rel. Bond & G. T. v. Superior Court,* 169 Wash. 688, 15 Pac. (2d) 660, affirmed in 289 U. S. 361; reported, too, in 89 A. L. R. 653, at about page 657, second column, . . . Secy. of State by law, became its agent, *for purposes of Service of Process* . . .

[Already cited, too, to U. S. District Court in No. 151, at R. 320.]

Process is complete, when made on Secretary of State.

> Paragraph #333, Ballantine on Corporations, page 320.

Wherefore, default of defendant [R. 320, in No. 151] Standard Oil Company, an Ohio corporation, is asked for in both No. 151 and No. 150 [R. 264].

"C."

Hence, it follows, too, that "C", precisely, of and concerning petitioners' "C" in Appellant's Opening Brief, No. 9200, now No. 151 just here is most too to the point:

"Standard of Ohio" Motions: the One, Standard Oil Co., an Ohio Corporation, by Special Appearance, and Particularly Many Affidavits From Ohio, Approaches the Frivolous by the Affiants Being Strangers to the Record.

A motion to dismiss is in legal effect the equivalent of a demurrer, raising only questions of law as distinguished from questions of fact.

> *Noshey v. Am. Auto Ins. Co.,* 68 Fed. (2d) 808 (C. C. A.);
>
> *Thompson v. Terminal Shares,* 89 Fed. (2d) 652.

The "Standard of Ohio" "questions of law," as will be seen, consist entirely of affidavits by strangers to the action, to-wit, Mr. Holliday [R. 207, in No. 151] and others, stating re. the First Amended Complaint though said W. T. Holliday NOT personally a party defendant, nevertheless purports to (deny):

> "Denies that said Standard Oil Company, an Ohio corporation, [187] directly or indirectly, *through agent, or subsidiary, or associate, or representative, at any time whatsoever caused either Standard Oil Company of California or San Martinez Oil Company, or anyone else whether a defendant herein* or not, to do or bring about, or cause to be done, or brought about, any act or thing whatsoever, *whether or not alleged in said First Amended Complaint* herein; . . ." [Tr. p. 214, etc., in No. 151.]

thereby purporting TOO, to have read the First Amended Complaint [which is VERIFIED, R. 132-133] but *appearing specially* "1. To dismiss the action, or in lieu thereof, to quash the return of the Service of Summons . . ." [R. 205, in No. 151]; which Honorable District Court, re: ["I" R. 372, in No. 151] was granted, [R. 375, in No. 151]: "(I) that Motion to Quash Service is granted" [339], having then and there left "Standard of Ohio" forever, after 30 days after service [R. 146-147, in No. 151] open to Default Judgment, as against "Standard of Ohio" fully here now in court, but everyone of their affiants allegedly of record:

Said W. T. Holliday [R. 207, in No. 151];

O. L. Brown, Asst. Treas. [R. 224, in No. 151];

F. H. Kelly, Secretary . . . [R. 241, in No. 151; having read First Amended Complaint [R. at 250 and at 218 and 361, in No. 151];

are, promptly strangers to the record; and Motion for DEFAULTS in both No. 150 and No. 151, already amply discussed.

Los Angeles, etc. Bank v. Northrup, 120 Cal. App. 677, 8 Pac. (2d) 528 (1932);

49 *C. J.* 182 at 209.

In Conclusion.

It would become too repititious to restate same substance here as to No. 150 wherein same officials of "Standard of Ohio" made very, very similar or identical affidavits, as virtual strangers, or,—are they allowing default as against STANDARD OIL COMPANY, an Ohio corporation:

Same, W. T. Holliday [R. 190, in No. 150]:

Same Secretary, F. H. Kelly [R. 210, in No. 150]; etc., etc.

Again, petitioners reiterate Roman No. "V" in Petition for WRIT(s) as to both Nos. 9158 and 9200 on FILE, we respectfully submit, were Air-Mailed to Washington, D. C., within time; and, such No. "V" point (in Petition, page 27):

That, all respondents:

". . . their manipulations . . . capable of *directly affecting,* and burdening and obstructing the

interstate commerce and thus they, *the respondents here, became subject by their wilful conduct to* Federal regulations."

Petitioners, already citing (Petition, p. 27):

Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126;

Edwards v. United States, 91 F. (2d) 767;

United States v. Wilshire, 9 F. Supp. 396, aff. 77 F. (2d) 1022;

C. E. Stevens Co. v. Foster & Kleiser Co., 109 F. (2d) 764, No. 41 this Court, Certiorari granted May 6, 1940.

Petitioners add:

United States v. Socony Vacuum Oil Co., 60 S. Ct. 811.

The whole, of all matters discussed by "Standard of Ohio's" brief, herein filed by Messrs. Felix T. Smith, and Norbert Korte and Francis R. Kirkman, amply makes same one substantial Federal Question,—TOO, as to jurisdiction as no diversity of citizenship is material, where violation of Anti-Trust law is the main controversy, petitioners submit as amply pleaded in No. 150 and No. 151, as well as petitioners' motions for "Standard of Ohio" Default, now in order before this Honorable Court. And, too, under DEFAULT(S) if entered in either or both cases, the Complaints sufficiently state a cause of action, so as to

sustain a Judgment in either case, No. 150 or No. 151 or both thereof.

Wherefore, it is respectfully submitted that Petition(s) for Writs of Certiorari should be granted.

Dated, Los Angeles, California, August 22nd, 1940.

N. LINDSAY SOUTH,
Fresno, Calif.,

R. C. W. FRIDAY,
P. O. Box 905 M. O.,
Los Angeles, Calif.,
Attorneys for Petitioners.

A. L. WIRIN,
Douglas Building, Los Angeles,
Of Counsel for Petitioners.